Center for Families, Children & the Courts
JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS

Update

Working Together for Families and Children

JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS • MARCH–APRIL 2002 • VOLUME 3, NUMBER 1

DOMESTIC VIOLENCE VIDEOCONFERENCE MEDIATION PROGRAM

Hiram Rivera-Toro, M.F.T., and Lisa Sullivan, M.A., Dispute Resolution Services, Superior Court of California, County of Riverside

Mediation is increasingly conducted in custody and visitation cases to resolve issues before they are heard by a judge. Family Code section 3181 provides that when there is a domestic violence allegation in a family law custody or visitation case, the mediator must meet with each parent separately. In these cases, the mediator conducts the negotiations by "shuttling" between the two parties, reporting to one what the other said, discussing it, and taking the response back to the other party for discussion. The process, repeated throughout the negotiation, often results in longer sessions and/or multiple appointments.

The Superior Court of Riverside County has applied technology to develop an innovative solution: the Domestic Violence Videoconference Mediation Program. Using videoconference systems purchased through a grant of federal family preservation funds, the court is conducting sessions via video in its Indio and Riverside court locations. Mediations conducted by video are being completed faster, more efficiently, and more effectively.

The alleged perpetrator appears in the family law mediation office for the mandatory custody or visitation mediation session while the other party attends,

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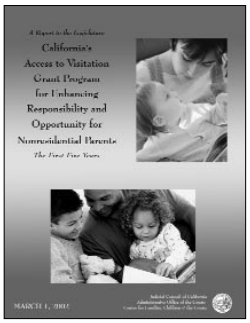
Access to Visitation Grant Program

LEGISLATION REPORT RELEASED

Shelly Danridge, Access to Visitation Grant Coordinator, CFCC



The Center for Families, Children & the Courts released its first report to the Legislature on California's Access to Visitation Grant Program on March 1, 2002. Pursuant to Family Code section 3204(b)(3)(d), the report provides detailed information on the programs funded for federal fiscal years 1997–2001 under section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104-193, 110 Stat. 2258). It also examines the extent to which those programs have achieved the goal of promoting healthy parent-child relationships while ensuring the health, safety, and welfare of children. The report provides county participant data; describes the extent to which the scope and availability of support services to families with children in family courts have been expanded; and outlines overall program administration, program accomplishments, grant review and selection processes, and annual reporting requirements.

Although the report makes no specific recommendations, it raises several major issues that warrant future legislative action. In addition, the report identifies programmatic "next steps" to be taken to improve the overall success

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ACCESS TO VISITATION GRANT PROGRAM STAFF MEET WITH REPRESENTATIVE FROM VIOLENCE AGAINST WOMEN OFFICE

Shelly Danridge, Access to Visitation Grant Coordinator, CFCC

In December 2001, staff of the Access to Visitation Grant Program and several other CFCC staff met with a representative from the Department of Justice's Violence Against Women Office (VAWO) regarding California's supervised visitation services and grant program. Ms. Michelle Dodge, VAWO's program manager, has been conducting research on the issue of supervised visitation throughout the United States to better understand the complexity of what supervised visitation is, identify best practices, and learn how programs are operating and being administered. While in California, Ms. Dodge visited the facilities of several nonprofit agencies and met with program directors. These site visits were arranged and conducted separately and independently of the Access to Visitation Grant Program to avoid any appearance of conflicts of interest or bias.

Staff took the opportunity of Ms. Dodge's visit to discuss the various accomplishments and programmatic issues related to the Access to Visitation Grant Program, as well as the ongoing policy challenges of supervised visitation services. Some of these are:

- Lack of available funding for supervised visitation services;
- Unavailability of supervised visitation programs and providers in over half of the state, which equates to lack of "access" to services for parents and children and/or families unable to participate in program services because of cost-prohibitive fees;
- Training and continuing education for providers (there is no statutory requirement mandating training for providers, nor is there any statewide agency to develop training curricula and provide continuing training opportunities);
- Development of common understanding among practitioners of what supervised visitation is and is not;
- Limitations on research and program evaluation to effectively measure parent and child outcomes; and
- Greater coordination and collaboration in overall service delivery and education among and with service providers, courts, family court services, judicial officers, and the professional community.

Of particular interest were issues relating to the wide range and quality of available services; the diverse models of service delivery now in use; the availability of training, education, and program resources (i.e., brochures, pamphlets, training videos); and the application of the Uniform Standards of Practice for Providers of Supervised Visitation (Cal. Standards Jud. Admin, § 26.2) as model best practices. Grantees funded under California's Access to Visitation Grant Program are required to comply with the standards to receive funding. Although opinions vary among practitioners about their "practicality," as well as the need to revise and amend certain provisions, the standards have at least brought some measure of accountability to providers. Accountability and quality of services remain open issues given that there currently is no agency to provide regulatory and oversight functions. However, the VAWO officer's assessment of California's services and practices was extremely positive.

California was one of the first states to reevaluate and reengineer its practices in the area of supervised visitation. While the fields of program practice in domestic violence and supervised visitation are organizationally diverse and common, new funding under the Violence Against Women Act of 2000 provides exceptional opportunities to work collaboratively with advocates from the domestic violence community on concerns related to visitation where there has been a history of violence. Given the significance of these issues and the need for education and strategies to prevent intimate violence, the Access to Visitation Grant staff look forward to building a stronger partnership with the federal and state VAWO organizations on issues of mutual interest.

ONE-YEAR GRANT FUNDING OPPORTUNITY FOR SUPERVISED VISITATION

The Violence Against Women Office (VAWO), U.S. Department of Justice, anticipates making $15 million in grants for supervised visitation services in 2002. This federal grant funding is provided through the Safe Havens for Children Pilot Program under the Violence Against Women Act of 2000 (Pub.L. No. 106-386, § 1301 (October 2000) 114 Stat. 1509). The request for proposals has been released.

The grant program's purpose is to provide supervised visitation and safe exchange of children by and between parents in situations involving domestic violence, child abuse, sexual assault, and stalking. Eligible grant applicants include states, local units of government, and tribal governments. Applicants will be required to collaborate with nonprofit domestic violence or sexual assault organizations and the courts.

The grant announcement is available online at *www.ojp.usdoj.gov/vawo*. For more information, contact the VAWO directly at 202-307-6026.

Access to Visitation Report

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of the grant program on a national, state, and local level. For copies of the report, please contact Shelly Danridge, Access to Visitation Grant Coordinator, at 415-865-7565 (e-mail: shelly.danridge @jud.ca.gov).

Judicial Council Releases Report on State Child Support Guideline

Amy C. Nuñez, Senior Research Analyst, and Michael Wright, Supervising Attorney, CFCC

Pursuant to Family Code 4054, the Judicial Council released the *Review of California's Statewide Uniform Child Support Guideline 2001* on December 31, 2001. Policy Studies Inc. conducted the research in collaboration with staff from the Center for Families, Children & the Courts and with assistance from the Family Law Subcommittee of the Family and Juvenile Law Advisory Committee.

The report reviews a study of 1,000 child support orders obtained in California to determine the actual application of the guideline in the courts. The child support orders studied were filed during calendar year 1999. The report also reviews economic data on the cost of raising children, analyzes guidelines and studies from other states, and summarizes other research and studies on child support guidelines. The Judicial Council requested that the study address three issues of special interest to the Legislature: (1) the guideline's treatment of low-income obligors, (2) its use of gross income versus net income as a base in establishing child support, and (3) the treatment of additional dependents.

The researchers concluded that most cases followed the child support guideline. In 75 percent of the cases, parents were not represented by attorneys. The majority of orders involved one child with the father as the paying parent. Sixty-eight percent of the sampled orders filed by the district attorney were entered by default. Orders entered on district attorney child support cases were less likely to deviate from the guideline than other cases. Among all cases, deviations from the guideline were primarily due to stipulations between the parties. The low-income adjustment was seldom applied in cases that qualified for the adjustment.

The study also included a survey of focus groups and guideline users. Respondents indicated that the strength of the guideline was consistent, uniform, predictable, and objective orders; that the guideline was fair to children; and that the guideline's weaknesses are its yield of high support orders, inflexible use, mandatory add-on costs, and inability to adjust for other costs.

The report recommends continued use of net income as the basis for calculating support as it more accurately reflects the actual amount of money available for the support of children than use of gross income would. Only minor technical changes are recommended regarding the treatment of additional dependents, as the current guidelines appear to provide a method for balancing the needs of all children of a particular parent. The report cites the need for additional study to determine how often the discretionary adjustment for other children in the home is actually given. It also suggests that the Legislature reevaluate the treatment of low-income obligors to determine whether the current guidelines adequately balance the basic needs of all family members in these difficult cases. The report suggests possible mechanisms should the Legislature determine that adjustments are needed for low-income obligors. To allow the use of the low-income adjustment in the large number of orders entered by default, as well as for other reasons, the report recommends that the low-income adjustment be made presumptive subject to rebuttal evidence. This change should reduce the number of cases requiring later adjustment.

The report is available on the CFCC Web site at *www.courtinfo.ca.gov/programs/cfcc/programs/description/1058study2001.htm.*

Editor's Note

WELCOME

to the March–April 2002 Issue of

Update,

the Center for Families, Children & the Courts (CFCC) newsletter. The newsletter focuses on court and court-related issues involving children, youth, and families. We hope you find this issue informative and stimulating. As always, we wish to hear from you. Please feel free to contact CFCC about the events and issues that interest you.

We invite your queries, comments, articles, and news.

Direct correspondence to Beth Kassiola, Editor, at the e-mail address below.

Center for Families, Children & the Courts

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www.courtinfo.ca.gov/programs/cfcc

Domestic Violence Videoconference

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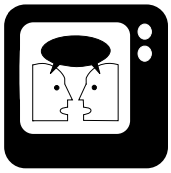

along with the mediator, via video from an undisclosed site. The victim has the ability to block out his or her own image to avoid being seen by the perpetrator during parts or all of the session.

Video allows parties to appear at the same time yet be physically removed, so that the issues can be discussed. In addition, the mediator can see how the parties interact, which is vital information for making a recommendation about custody or visitation. The results are a streamlined mediation process—an important consideration in domestic violence cases—and more meaningful mediation sessions.

While fulfilling the legislative mandate, the program serves some of the goals expressed in the Judicial Council's Strategic Plan:

- Goal I—Access
- Goal III—Modernization of management and administration
- Goal IV—Quality of justice and service to the public
- Goal VI—Technology

Any court can replicate the Riverside program by following these guidelines:

1. Identify two locations where mediation sessions can be conducted. They should be far enough apart to eliminate the possibility that the parties will see each other in the parking lot or while entering and exiting the building.
2. Contact several vendors that sell videoconference equipment and explain what you are proposing to do. Have each vendor develop a proposal outlining the details of the system it offers (equipment specifications, cost, etc.). Keep in mind that the systems should be movable; they should not be permanently installed in any office in case the location of the mediation session changes. Placing a system on a cart enables several mediators to share the equipment by simply rolling it into their offices as needed.
3. Draft procedures for the clerk's office to follow when a case being set for mediation involves domestic violence issues. The court needs to determine whether the parties will be allowed to choose the method of appearance (either separate sessions or videoconference) or whether it will automatically schedule all such mediation sessions for videoconference. Even in the latter instance, if a party does not want to attend via videoconference, he or she should be allowed to opt for separate sessions.
4. Train court staff to use the equipment. Mediators may need a few practice sessions to get comfortable with the system and to ensure that they pay equal attention to both parties, since the alleged perpetrator will be at a different site.
5. Develop a survey mechanism for participants to provide feedback on the strengths and weaknesses of the program.

The first videoconference session in Riverside County was held on April 23, 1999, and since that date, many sessions have been conducted with the equipment. Until now, its use has been optional. The Riverside court is changing its procedures to make videoconferencing the default choice, so its use will increase in 2002.

After the videoconference sessions, the participants complete a survey to provide the court with feedback on their experience. The court modified the survey that simultaneous mediation participants complete, adding questions about the videoconference aspect of the session. Overall, comments about the service have been positive, especially from domestic violence victims.

The program offers numerous benefits that cannot be measured. They include the following:

- Protection of the victim from harassment at the court and from potentially being stalked or followed when the session is completed;
- A reduction in the conflict typically experienced by parties when they meet face to face, because the perpetrator cannot "censor" or intimidate the victim through nonverbal cues;
- More amicable and constructive interactions between the parties, because the victim experiences a greater sense of protection and security both during and after the process;
- An increase in the victim's sense of empowerment, security, and control, which in turns allows the victim to better focus on the children's needs;
- A reduction in the victim's level of anxiety during the session, because his or her personal security (perceived and actual) is not threatened, with the result that the victim's distortion of the events is minimized;
- A reduction in the minors' stress, should they have to be interviewed as part of the process; and
- An overall greater degree of safety for the victim, the minors, court staff, and the public.

Hiram Rivera-Toro, M.F.T., has been supervising court mediator for Riverside County's family and juvenile courts since August 2000. His professional involvement with family court dates back to 1986, when he began providing "extended mediation" and child custody evaluations as a private practitioner. In July 1997 he was assigned full-time to the juvenile dependency court to develop the dependency mediation program. He is licensed to practice marriage and family therapy in California and is a guest lecturer and instructor at numerous colleges and universities in the Riverside area.

Lisa Sullivan, M.A., was licensed to practice marriage and family therapy in Colorado in 1998. In addition to private practice her professional background includes work as a Court Appointed Special Advocate for abused and neglected minors and as a court evaluator making forensic recommendations for custody and visitation. She also has taught courses on the effects of divorce on children, as well as classes in postdivorce parenting skills that were cofacilitated by an attorney. Since joining the Riverside court's Dispute Resolution Department in July 2000, Ms. Sullivan has provided videoconferencing for separate mediation sessions as required by California state law in cases of domestic violence. She expects to complete the requirements for California state licensure in mediation within the next few months.

Judicial Council Kleps Awards Honor Outstanding Court Programs

Blaine Corren, Communications Specialist, AOC Office of Communications

In December 2001 the Judicial Council of California announced the recipients of the 2001 Ralph N. Kleps Awards for Improvement in Administration of the Courts, an annual awards program recognizing innovation in the state's courts. The council selected 11 exemplary programs from a field of 59 nominees for the awards, which were presented at the California Judicial Administration Conference (CJAC) held at the end of January 2002.

The Superior Court of Contra Costa County displays a collection of artwork created by children involved in court proceedings.

The award program was created in 1991 in honor of Ralph N. Kleps, the first Administrative Director of the California courts. The awards are given in five categories, defined by the number of authorized judicial positions in a county court system. Programs nominated for the awards are judged on four criteria. The program must be innovative, transferable to other courts, and in operation for at least one year, and it must improve the administration of the courts and reflect the intent of at least one of the goals of the Judicial Council's Long-Range Strategic Plan (access, fairness, and diversity; independence and accountability; modernization; quality of justice and service to the public; education; technology).

2001 KLEPS AWARD WINNERS

APPELLATE COURT OUTREACH PROGRAM

Court of Appeal, Third Appellate District

The jurisdiction of the Court of Appeal, Third Appellate District comprises 23 counties and covers the largest geographic area of all the appellate districts. To enhance access to the court by those residing outside of Sacramento County, where the courtroom is located, and to effectively educate the residents of outlying counties regarding the appellate process, the court schedules two-day programs at local high schools. On the first day, justices hold a question-and-answer session with students and teachers, followed by an evening event hosted by the local bar association at which justices and court staff answer questions about court operations. During the second day, a panel of justices conducts oral argument in actual cases at a local high school, with students, teachers, and the general public in attendance.

UNIFIED FAMILY IN-COURT CLINICIAN

Superior Court of Yolo County

The family in-court clinician is a private-practice therapist who works with the unified family court to help children who need mental health services as a consequence of the issues that have brought their families into court. The Yolo County Department of Alcohol, Drug, and Mental Health established the program through grant funding from Temporary Assistance for Needy Families (TANF) and CalWORKS. Recognizing the need to provide therapeutic support to low-income families appearing in court, the clinician program addresses the counseling needs of the high percentage of "Welfare to Work" families. Since the program's inception in June 2000, the court has referred 107 families for services.

CHILDREN, COURTS, AND ARTS PROJECT

Superior Court of Contra Costa County

The family and juvenile court facilities display paintings, drawings, and writing by children who are the subjects of court proceedings. There are 75 permanently fixed displays for rotating artistic presentations. The displays reflect both the hope and the pain children experience in proceedings associated with custody, dependency, and delinquency and serve as a reminder for court visitors and staff of the special needs of children.

COURT-COMMUNITY LEADERSHIP AND LIAISON PROGRAM

Superior Court of San Joaquin County

The Court-Community Leadership and Liaison Program is designed to provide the minority and disabled communities in San Joaquin County with representatives who can serve as liaisons with the courts. Liaisons attend the court's Leadership Academy, an intensive 12-week program involving one class per week taught by San Joaquin County judges and other justice system professionals. Liaisons are responsible for answering questions concerning the justice system or for providing a contact within the system to get the question answered. They also serve as representatives for their communities in quarterly

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Kleps Awards

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meetings with courts to discuss court-related problems or concerns in their communities.

HOMELESS COURT

Superior Court of Ventura County

The Superior Court of Ventura County's homeless court is a collaborative court and community program. It provides an alternative sentencing mechanism for homeless individuals to resolve outstanding minor offenses through community service rather than fines. The program works in collaboration with a large number of social service agencies. Special court sessions are scheduled at various homeless advocacy locations in areas of the county most affected by homelessness. Mental health professionals operating under a grant originating from Assembly Bill 2034 assist the homeless court in providing special housing referrals and access to medication for those with mental health needs.

FIND ARBITRATOR MEDIATOR ELECTRONICALLY (FAME)

Superior Court of Los Angeles County

The Find Arbitrator Mediator Electronically (FAME) project evolved as a solution for providing alternative dispute resolution mediators and arbitrators, also known as "neutrals," to the public in an efficient, fair, and technologically advanced manner. Through an automated selection process, individuals can review profiles of neutrals or randomly select them. By eliminating paper documentation, the program helps streamline the process of selecting neutrals.

SMALL CLAIMS ELECTRONIC FILING PROGRAM

Superior Court of Sacramento County

The small claims court in Sacramento County implemented a fully automated, paperless case program in 1997 that allows customers to create new case filings by answering a series of questions on computers located at the courthouse. This successful format was modified for the Internet e-filing program. Because Internet filers do not have access to the staff assistance and small claims legal advisor available at the courthouse, the program includes an extensive number of online "help" functions that address program usage, legal questions, and procedural guidance. The program can be accessed through the court's Web site at *www.saccourt.com*.

F.O.C.U.S. PROGRAM—MONITORING COURT PERFORMANCE USING A BALANCED SCORECARD

Superior Court of San Diego County

Beginning in July 2000, the Superior Court of San Diego County instituted the F.O.C.U.S. (Finances, Operations, Customers, and Use of Staff) program. Rather than just monitoring traditional fiscal and operational goals, the F.O.C.U.S. program creates a formal and organized data-collection and quarterly review process that also highlights numerous customer service and staffing performance measures in sufficient detail to identify progress, accomplishments, and areas of concern. Trends can be identified and tracked, problems more quickly and easily identified, and corrective actions taken and monitored.

JUVENILE DELINQUENCY DOMESTIC VIOLENCE/FAMILY VIOLENCE COURT

Superior Court of Santa Clara County

The focus of domestic violence/family violence (DV/FV) court is to address the behavior of an abusive minor and to provide support for the victim. Minors are referred to DV/FV court by juvenile probation at the beginning of the case. Progress is monitored by frequent reviews. To support the court, juvenile probation established a specialized unit to investigate and intensely supervise minors charged with these acts. The unit provides specialized classes on domestic and family violence and assesses offenders for mental health issues. Victims are referred to domestic violence advocacy agencies for help with obtaining restraining orders and, if the victim has a child, help in establishing paternity, child support, and visitation or custody.

SACRAMENTO-AMADOR INTERNET/INTRANET

Superior Courts of Sacramento and Amador Counties

The Superior Courts of Sacramento and Amador Counties' Internet and Intranet project aims to benefit the public and courts by making information available via the Internet. The Web sites provide more than a thousand pages of information, from recommendations on appropriate court apparel to child-care services and traffic tickets. While other courts have provided similar information, this program offers a scalable process that allows the easy development of Web sites for both large and small courts through the use of standard templates, forms, and software packages.

CENTER COURTS REGIONAL TRAINING DAY

Superior Courts of Stanislaus, San Benito, and Mariposa Counties

On Saturday, March 17, 2001, Saint Patrick's Day, approximately 274 employees from 11 courts in Central California attended court-related training sessions at the California State University at Stanislaus campus in Turlock. The training day was dubbed "Operation Leprechaun." This was the first large-scale collaborative project of the Center Courts, a regional consortium of Central California trial courts. Training grant funds received by the Superior Courts of Mariposa, San Benito, and Stanislaus Counties were pooled to help pay for the new training sessions.

Reprinted, by permission, from Court News, *Jan.–Feb. 2002, pp. 8–9.*

Dependency Cases Resolved Sooner

Marilyn Laurence, Public Affairs Officer,
Superior Court of California, County of San Diego

In San Diego County, cases involving abused and neglected kids who have been removed from their homes are being resolved faster than ever before.

Juvenile dependency reforms attracting national attention have more than halved the length of 1,701 dependency cases, reunified almost half the abused or neglected children with their parents, and placed 533 children into adoptive homes between April 13, 1998, and January 13, 2001.

The statistics reflect the implementation of the court's Substance Abuse Reporting and Monitoring System (SARMS), which began in 1998. The program gave judges the wherewithal to confront parental substance abuse by making more mandatory treatment available and offering an innovative testing and monitoring program that periodically provides reports to the court.

"We knew that 80 percent of dependency parents had substance abuse problems, but the previous system did not hold parents responsible for getting treatment," says Presiding Juvenile Court Judge James R. Milliken. "Children languished in foster care because of too few treatment slots and the lack of a tracking system that let parents avoid treatment without penalty." Now addicted parents know that if they fail to change their behavior, they will permanently lose all rights to their children.

With 30 drug abuse treatment providers on its roster, SARMS immediately places parents at their appropriate level of treatment, tracks their compliance, and performs weekly drug tests for the court. An average of 80 percent of parents now comply with treatment orders, including 6 percent who need the additional judicial supervision of dependency drug court. At the end of last November, the 1,030 parents currently participating in SARMS had an 84 percent compliance rate.

The time required to resolve and close a case has plummeted from an average of 34 months before the SARMS program began to an average of 16.5 months in January 2001. The court currently does not contact families once cases are closed, but it is a strong contender for a three-year federal study to measure the stability of SARMS families once they leave the court system.

Where it is safe to do so, the court now returns children to their homes within an average of 8.3 months and continues to monitor progress. Permanent placement plans with parents, foster parents, or adoptive parents are now in effect in an average of 11.3 months. The turnaround meets federal guidelines for permanent plans to be complete within 12 months from the date the child entered foster care.

During the 1998–2001 period, 1,701 children entered permanent placements. A total of 842 children, or 49.5 percent, reunified with their clean-and-sober parents. The court placed another 9.4 percent in guardianships, 9.8 percent in long-term foster care, and freed 31.3 percent, or 533, for adoption.

Family group conferencing is another innovation that has contributed to the program's success. Relatives and friends participate in family group conferences to help support the parents' efforts to change abusive or neglectful behavior. The court conducted 31 family meetings during the period, with only four families, or 13 percent, requiring foster-care placements despite extended family intervention.

In addition, the court has promoted the use of settlement conferences to reduce adversarial litigation; increased the number of the county's Court Appointed Special Advocates; and promoted the city and county's sober housing initiative to relocate recovering parents in nonaddictive settings. It has also promoted increased training in independent living for foster children who will leave the system as adults when they turn 18.

In San Diego, only 61 percent of foster youth graduate from high school compared to 70 percent of the general population. Statewide, 75 percent of foster kids perform below grade level, with 50 percent held back for at least one year. In June 2000, with the formation of the interagency Education Committee chaired by Judge Susan D. Huguenor, the San Diego court tackled the difficulties foster children have in keeping up at school. The 20-member group aims to create a more cohesive and effective system for monitoring the education of the 3,750 delinquency wards and 7,600 dependent children under the court's supervision.

Marilyn Laurence has been San Diego Superior Court's public affairs officer since the position was created in 1989.

New Commissioner Will Be Working Her Magic From the Bench

Jennifer Walter, Supervising Attorney, CFCC, and
Deb Hedger, Attorney, Habeas Corpus Resource Center

When newly appointed Commissioner Shawna Schwartz took the bench in Santa Clara County this past January, she brought with her more than just cool coin tricks. An amateur magician since age 10, Schwartz is also a passionate, confident, and skilled child advocate. The legal community describes her as the first openly out lesbian to sit on the bench in Santa Clara County. Yet Schwartz describes herself as just living her life and trying to make a difference: "I try to do my job well and live with integrity. I'm open and honest and don't expect special treatment."

Schwartz's inspiration for who she is today, she says, comes from her parents, especially her mother, whom she describes as a very strong woman. She speaks warmly and fondly of her parents: "In my family, everyone was equal; there were no boy or girl toys." Growing up, Schwartz says, "there was never any question that I could be whatever I wanted. I was raised to think I had no limitations."

So when asked how and why law school, Schwartz said her partner encouraged her to attend, realizing that she would enjoy putting her analytical and problem-solving skills to work.

Bay Area Lawyers for Individual Freedom (BALIF) played an early and positive role in her legal career. As a first-year law student at the University of Santa C1ara, Schwartz attended a BALIF seminar at Stanford. One of the panelists was Shannan Wilber, a BALIF member, an expert in children's advocacy, and founder of Legal Advocates for Children and Youth (LACY).

Schwartz was the only student from her law school at the seminar that day, and it turned out that Shannan Wilber, a graduate of Santa Clara's law school, sought out the first-year law student and encouraged her to consider juvenile law. It was Schwartz's introduction to juvenile law, and she was hooked from the start. The fates were smiling on Schwartz that day because she left the seminar with an invitation from Wilber to contact LACY as a second-year law student to explore internship possibilities.

Her legal career blossomed quickly. Schwartz says she set her sights on becoming a judge when she was in her third year of law school. She knew she wanted to make a contribution in the juvenile court system.

The fates smiled again when her friend and mentor, Hon. LaDoris Cordell, turned to her and said, "How are we going to get you on the bench?" That was several years ago, and Schwartz feels fortunate that she had early encouragement to formulate a career plan. That path has included taking the helm at LACY for the past six and a half years.

Along the way Schwartz has developed skills and traits of judges she deeply admires, such as juvenile court icon Judge Len Edwards of the Superior Court of Santa Clara County. "I decided that I wanted to mold myself after Len Edwards. No one can be Len Edwards, but I want to be like him—an expert, well respected, and making the changes needed to help families."

Every other Friday Commissioner Schwartz will be sitting in South County, while the bulk of her time will be in San Jose, hearing abuse and neglect cases as well as the pilot drug court calendar. On the bench, she says, she will strive hard to be patient and to ensure that family members feel that they have been heard and had their day in court.

One tip to wise attorneys appearing before Commissioner Schwartz: "I do not suffer fools gladly," she says. "I expect lawyers to be professional, prepared, and competent." It appears that the children and families of the Santa Clara County juvenile court have serious dedication, intelligence, and exuberance in their new commissioner, with a little magic on the side.

Adapted, by permission, from Bay Area Lawyers for Individual Freedom Newsletter, *Dec. 2001, p. 4.*

CASA Volunteers' Unique Contributions to the Dependency Court System

The 25th Anniversary Conference of National CASA will take place in April in San Diego. Its theme, "Changing a Million Lives, One Life at a Time," serves to remind us that CASA programs succeed because of volunteers dedicated to helping children in the court system.

Every child has his or her own story. CASA programs, as dependency system participants, seek to meet each child's unique needs. This is accomplished through the tireless efforts and commitment of CASA volunteers who work to build relationships with the children; investigate and determine whether resources are available to meet the child's educational, physical, and emotional needs; discover the best way to improve a child's life; and advocate change by reporting and providing valuable information to the court.

The following articles tell the stories of two children and the changes that took place in their lives through the dedication and support of CASA programs and volunteers.

TWO CASA PROGRAMS JOIN TO BUILD A BRIDGE OF SUPPORT FOR ONE SMALL BOY

Sheila Holmes, CASA Volunteer,
Alameda County CASA Program

In January 2001, Alameda County Child Protective Services removed 4-year-old Sammy* from his home. Sammy and his two older siblings, ages 6 and 8, became dependents when it was determined that all three children had been exposed to a long history of maternal substance abuse and domestic violence. The two older siblings were relocated to Los Angeles to reside with a relative. Sammy remained in Alameda County because the relative did not feel able to deal with Sammy's complicated issues.

When the Alameda County CASA volunteer first met Sammy, he was two months shy of his fifth birthday. He weighed 36 pounds. He could not make eye contact and pulled away if a gentle hand touched his shoulder. This hard-of-hearing boy was severely delayed in speech and language and was unable to communicate his feelings or understand what had happened to him and his family. He withdrew from his environment; temper tantrums provided his only emotional outlet.

Sammy required strong advocacy in many areas: placement, health, psychological evaluation, education, speech and language.

September 2001 found Sammy making some wonderful short-term gains: his health was stable; he had been placed in a special education kindergarten class and was receiving speech therapy; assessments in developmental pediatrics, neuropsychiatry, and audiology were nearing completion. In his foster home, Sammy was gradually responding to consistent discipline, a clean environment, proper nutrition, and affection.

The bigger picture showed Sammy to be globally delayed. Hard-of-hearing children like Sammy face a huge challenge because they are shut off from a lot of environmental communication. Sammy was totally lacking in real-world skills that would have made him less vulnerable to a wide range of potentially dangerous life situations. He needed long-term intensive speech therapy. Of equal significance was the fact that he remained separated from his siblings, father, and extended family.

Over time it became apparent to both the foster mother and the CASA

Continued on page 10

*The names of the children in these articles have been changed to protect confidentiality.

A CASA'S STORY

Teresa Tardiff, CASA Volunteer,
San Luis Obispo County CASA Program

When I first met 3-year-old Tammy,* she looked like a little doll, with beautiful flowing hair and long, thin arms and legs. Born with fetal alcohol effect and failing to thrive, she had been fed through a tube in her chest for her first two years. At the time of our first meeting, she would either refuse food or stuff herself, often swallowing without chewing, and she could not walk on stairs without bringing both feet together.

Tammy was residing with her mother, Jackie, in a dual treatment residential program for mental illness and alcoholism, following a short stay in a foster home that resulted from her mother's arrest for child endangerment and neglect. During the first weeks, I sought services for Tammy to meet her special needs. An occupational therapist and a speech pathologist began working with her on her physical and verbal abilities. In addition, I located a language-based special-needs preschool nearby that she could attend during the mornings, and arranged transportation through the residential facility.

Continued on page 10

CASA Support for One Small Boy

Continued from page 9

volunteer that remaining in Alameda County was not in Sammy's best interest. Sammy's parents were working toward reunification; father and siblings were living in Los Angeles. Mom was not yet able to participate in Sammy's life. The boy's language delays required a special school capable of addressing all of his needs. It was time to strongly suggest to the court that Sammy be moved to Los Angeles.

The Alameda County Juvenile Court ordered Sammy's case transferred to Los Angeles County in October 2001. Now the bridge-building between the CASAs of Alameda and Los Angeles Counties began.

From their discussions a four-part plan emerged: (1) work with the Los Angeles County Department of Children and Family Services to locate a specialized placement for Sammy where he could continue to improve; (2) provide ongoing support and education to Sammy's father until he is confident in his ability to parent his special-needs son; (3) arrange a transfer for Sammy that is as trauma-free as possible; (4) aid in establishing a collaborative relationship between the Los Angeles County Department of Children and Family Services and Los Angeles County CASA.

Through the efforts of both CASAs and the Los Angeles Department of Children and Family Services, a potential placement was located for Sammy in January 2002. The foster mother requested a preplacement interview with Sammy before making her decision. Unfortunately, Los Angeles County could not fund the airfare; fortunately, Alameda County CASA could. The foster mother visited Sammy for a whole day. There was hope.

It is a pleasure to report that four months of intense planning resulted in Sammy's placement in a foster home that seemed designed especially for him. Greeting him the day he arrived, after a very exciting airplane trip, were his new foster mother, his child welfare worker, and his CASA volunteer. He was accompanied on the trip by his Alameda County CASA volunteer, who had almost as much fun as he did.

Los Angeles County CASA played a significant role in bridging the move for Sammy. The director's willingness to "hear Sammy's story" and quickly respond allowed the court to appoint a CASA volunteer for Sammy immediately upon his placement in Los Angeles. The intake coordinator's thoroughness in compiling accurate information about Sammy led to the assignment of a seasoned and effective CASA volunteer. This volunteer will now seek to build yet another bridge from foster mom to Sammy with the ultimate goal of reunification of a father with his son.

Through their efforts and cooperation, Sammy's CASA volunteers have changed his life now and for the future. This one small boy will not fall through the cracks, because two dedicated CASA volunteers were there to speak for him.

Ms. Holmes has been a CASA volunteer in Alameda County for seven years and is presently completing a two-year program in American Sign Language and deaf culture. She is particularly interested in advocacy and education for families of deaf and hard-of-hearing children.

A CASA's Story

Continued from page 9

For the first month I visited Tammy weekly either in the day-care center at the facility or in the presence of her mother. By about the sixth week Tammy was comfortable enough to go with me on an outing. We became good friends.

After over 18 months of monitoring, I recommended that the dependency case be terminated. Jackie, the mother, had graduated from the dual treatment program and was attending college full-time. The two were living in an apartment, and Tammy had begun attending a special education preschool. Tammy was making slow but steady progress in both her physical abilities and her comprehension. Tammy's father had been released from prison and watched her in the evenings after work while Jackie studied. Tammy was being well cared for by parents who were both working hard to better their lives.

I was reappointed to the case 10 months later when Jackie had a relapse and stopped taking her medication. Tammy was placed with her father while Jackie attended a 10-day detox program.

Jackie completed the detox program and was able to care for Tammy with

Continued on page 11

INVITATION TO COMMENT ON PROPOSED RULES, STANDARDS, AND FORMS

The public comment period for proposed new and amended rules, standards, and forms is March 28, 2002–June 7, 2002.

All proposals will be posted on the California Courts Web site at *www.courtinfo.ca.gov/invitationstocomment*. The proposals are for comment only: they have not been approved by the Judicial Council and are not intended to represent the views of the council or its Rules and Projects Committee. If the council adopts the proposals, the changes will become effective January 1, 2003.

The comment process is vitally important to the work of the Judicial Council, and it gives the courts, interested persons, and organizations a systematic procedure for ensuring that proposed changes to rules, standards, and forms receive proper consideration. All comments will become part of the public record of the council's action. We encourage you to participate in this process.

A CASA's Story

Continued from page 10

regular therapy. Random drug testing was required, and I closely monitored both Jackie and Tammy. Following a couple of violent episodes between the father and Jackie, it became evident that Tammy's father was using drugs. Only supervised visits were allowed for him now. Eventually he was arrested for drug violations and sentenced to three years in prison.

I continued to see Tammy weekly and advocate for her at school, attending her Individual Education Program (IEP) meetings and school conferences. She started kindergarten. I spoke regularly with the day-care provider and teacher to monitor her progress.

Once again, Jackie relapsed. I made arrangements for Tammy to stay overnight at the day-care home and took her to the shelter-care home on the following day.

Jackie entered a 90-day rehabilitation program. Halfway through she was asked to leave for violation of the no-alcohol policy.

Tammy was moved to a foster home with nine other children and was clearly unhappy. The foster mom reported that Tammy was exhibiting bizarre behavior, such as destroying toys, appearing with a knife in the baby's room at night, and sexualized behavior. Tammy denied all of the incidents. Social services had Tammy evaluated, and based on the behavior reported by the foster mom, the psychologist found her so mentally ill that she would likely be unadoptable. Tammy's teachers were totally bewildered by these reports and said that Tammy got along well at school and exhibited no behavior problems. I obtained reports to contradict the foster mom from teachers and others who knew Tammy and was able to convince the court to move her to a different home.

NEW *Journal of the Center for Families, Children & the Courts*

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Volume 3 of the *Journal of the Center for Families, Children & the Courts* focuses on juvenile delinquency and includes articles on

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- Disproportionate confinement of youth of color
- Sexually abusive youth
- The strength-based approach

If you wish to receive a printed copy, please write to cfcc@jud.ca.gov or call 415-865-7739. The journal is also available in Adobe® Acrobat® (PDF) format at *www.courtinfo.ca.gov/programs/cfcc/resources/publications/journal*.

Tammy was much happier after moving to a new home. She slept well, and her verbal skills continued to improve. After several months, social services notified me that Tammy would be moved again because this home was only supposed to provide shelter care and she had already stayed longer than was appropriate. We asked the court to not move her again until permanent placement, and it agreed. Tammy was left in the care of her current foster parents, who never saw any bizarre behavior during the year she was in the home.

During the five years of our relationship, Tammy was always glad to see me although she was often very sad and missed her parents terribly. She would take my hand and be enthusiastic about whatever we did, whether it was a trip to the library or the children's museum or even riding in the cart at the grocery store. There were some periods of time when I was the only consistent person in her life.

It was clear that Tammy needed a permanent home, and eventually she was freed for adoption. She was placed with relatives out of state who were aware of her special needs and were committed to loving her always. I flew with her to her new home and stayed nearby while she got settled.

Tammy has bonded with her new family and has made outstanding progress in school, having been mainstreamed to a regular first-grade class. I miss Tammy, but I am so glad she now has what every child deserves: a loving permanent home where she is safe and her needs are consistently met.

Ms. Tardiff has been a volunteer with CASA since 1994 and with the San Luis Obispo CASA program since 1996.

Grant Programs for Family Treatment and Collaborative Justice Courts

Nancy Taylor, Senior Court Services Analyst, and Lisa Lightman, Court Services Analyst, AOC Executive Office Programs Division

A range of family treatment and collaborative justice court models developed in California in the 1990s. The Collaborative Justice Courts Advisory Committee defines these courts as follows: "Collaborative justice courts include integration of services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multidisciplinary involvement, and collaboration with community-based and government organizations."

Currently there are more than 250 family treatment and collaborative justice courts and court-connected programs in California. They include:

- **Community Courts.** These courts involve multiple community partners and may include an array of sanctions and services, such as community restitution projects, on-site job training, drug treatment, and health counseling.
- **Domestic Violence Courts.** Specialized domestic violence courts deal with felony and misdemeanor domestic violence crimes. Such courts pay close attention to the victim and assess the level of danger that an offender may pose. Courts with a focus on domestic violence in addressing civil issues, such as child welfare, custody, or visitation, are also included in collaborative justice court projects.
- **Homeless Courts.** These courts deal with a complex range of issues affecting homeless people, who require numerous services, including counseling for mental illness, treatment for chronic alcoholism and drug addiction, and help for physical disabilities and chronic health problems.
- **Juvenile Delinquency Drug Courts.** A juvenile delinquency drug court has two primary goals: ending juvenile offenders' use of alcohol and other drugs and reducing their delinquent activity. The first juvenile drug court in California opened in Visalia in 1995. Currently there are more than 30 juvenile drug courts in California.
- **Mental Health Courts.** These courts work with clients who have mental health problems, bridging the chasm between the mental health and criminal justice systems. The courts receive referrals from a variety of sources and link defendants to mental health services.
- **Peer/Youth Courts.** Peer/youth courts are youth-focused and youth-driven. They are designed and operated to empower youths, assisting them to think, make choices, and develop connections with adults. The target population is teenagers arrested on misdemeanor charges and even minor felonies—anything from graffiti writing to small-time drug sales. These courts usually handle nonviolent first-time defendants accused of shoplifting, vandalism, starting schoolyard fights, and committing crimes unlikely to be prosecuted otherwise.
- **Reentry Courts.** A relatively new concept, reentry courts are defined as the means by which offenders with substance abuse problems may be reintegrated into communities once they are released from correctional facilities (either jail or prison based).
- **Balanced and Restorative Justice/ Victim-Offender Reconciliation.** The three primary goals of these programs are community protection, accountability, and competency development. They are intended to keep the offender in the community and offer competency development, which includes vocational skills, education, conflict management, and health and recreation.

The Collaborative Justice Courts Advisory Committee, appointed in January 2000, coordinates two grant programs for collaborative justice courts: the Juvenile Accountability Incentive Block Grant (JAIBG) program and the judicial branch drug courts projects allocation.

The AOC administers the JAIBG grants funded by the Office of Criminal Justice Planning (OCJP), which totaled $1 million in fiscal year 2001–2002. These mini-grants were used to fund 14 juvenile delinquency drug courts (nearly half of the juvenile delinquency drug courts currently operating in California) and 12 peer/youth courts.

Generally, the JAIBG mini-grants have ranged from $10,000 for planning to over $40,000 for court programs in operation. Planning grants were given to the Colusa Teen Court and the San Luis Obispo Juvenile Drug Court. Full mini-grants were awarded to peer/youth courts in the following counties' superior court systems: Calaveras, El Dorado, Fresno, Humboldt, Imperial, Placer, Santa Barbara (Santa Barbara and Santa Maria), Santa Cruz, Sonoma, and Ventura. Full mini-grants were awarded to juvenile delinquency drug courts in the following counties: Butte, Contra Costa, Fresno, Kern, Mendocino, Nevada, Placer, Riverside, San Diego, Santa Clara (two), Shasta, and Ventura.

A juvenile delinquency drug court can use its grant to fund a juvenile drug

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Grants for Family Treatment and Collaborative Justice

Continued from page 12

court coordinator; treatment services (including assessment, case management, and residential services); drug testing; rehabilitation, vocational training, job placement, and health services (health screening for HIV, hepatitis, and sexually transmitted diseases); pre- and perinatal services; tattoo removal and dental work to improve employability; client services (child care and transportation); educational materials, films, and videotapes pertaining to education, treatment, and recovery; and staff training.

Mini-grants in peer/youth courts may be used for a teen/youth court coordinator; educational materials, films, and videotapes pertaining to education, treatment, and recovery; drug testing; counseling and treatment (tobacco education, substance abuse, violence, and coping); rehabilitation, vocational training, job placement, and health services; and staff training.

The other grant program is funded through the judicial branch drug court projects allocation, which in fiscal year 2001–2002 provided $1 million to fund family treatment courts and collaborative justice courts with a substance abuse focus. This grant program is designed to promote innovation in court models that address complex community problems exacerbated by substance-abuse-related offenses.

Family treatment courts in 14 counties received awards averaging $30,000 each, a total of $378,000: Butte, Contra Costa, Fresno, Nevada, Placer, Sacramento, San Diego (two), San Joaquin, Santa Clara (two), Solano, Stanislaus, and Ventura. Collaborative justice courts in 12 counties received $620,000 through 11 grant awards ranging from $50,000 to $80,000: Butte/Glenn, El Dorado, Fresno, Los Angeles, Riverside, San Francisco, San Joaquin, Santa Clara, Solano, Tuolumne, and Ventura.

Following are some examples of family treatment and collaborative justice courts funded by this grant program.

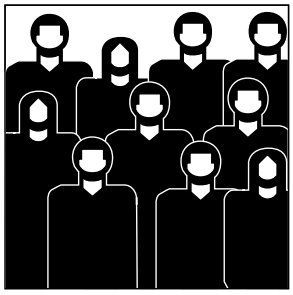
- Butte County: The *Family Treatment Court* provides early identification of parents who are abusing drugs and alcohol and who may be placing their minor children at risk. The program promotes public safety and improves parenting by providing integrated, coordinated, and collaborative drug and alcohol treatment services and by using a nonadversarial judicial approach.
- Contra Costa County: The *Domestic Violence Court* meets weekly and focuses on misdemeanor domestic violence offenders who are on formal probation. This program seeks to serve indigent offenders, including incarcerated defendants, through a 52-week batterers' treatment program that includes drug testing and treatment, education, anger management, and referrals for health, housing, and other assistance.
- Los Angeles County: Working with the Superior Court of Los Angeles County, the *Centinela Valley Juvenile Diversion Project (CVJDP)* is a nonprofit agency that performs victim-offender mediation and restitution justice services for youth referred by the juvenile justice system. The program serves first- and second-time youth offenders, ages 7–17, who are charged with crimes such as weapons possession, vandalism, drug possession, assault, and arson. CVJDP and the juvenile justice courts have been collaborating since 1992 to provide services to youth offenders.
- Riverside County: The *Riverside Mental Health Court* addresses the proper treatment and placement of criminal defendants with mental health issues who plead guilty, with the aims of reducing recidivism, relieving jail overcrowding, and providing appropriate treatment. The program aims to place defendants who are too volatile for community-based treatment in secure mental health facilities rather than in state prison.
- Sacramento County: The *Sacramento County Juvenile Dependency Drug Court* focuses on substance-abusing parents of children ages 0–3 years, as identified by Child Protective Services. The dependency court provides closely monitored treatment services to assist parents in the process of reuniting with their children. The program also assists parents with related health problems, transportation, and child care.
- San Diego County: The *Dependency Court* in San Diego has implemented a Substance Abuse Recovery Management System (SARMS) to make alcohol and drug treatment immediately available for parents. SARMS recovery specialists provide assessment, preparation of recovery services plans, immediate access to treatment, follow-up case management, and progress reports to the court.
- San Joaquin County: The *Domestic Violence Court* will add a substance abuse component to its current calendar. The target population will be Hispanic domestic violence offenders who have substance abuse problems. The program's purpose is to reduce incidents of domestic violence by dealing with both the substance abuse and domestic violence problems.

For more information, contact Nancy Taylor, Administrative Office of the Courts, Executive Office Programs, 415-865-7607; e-mail: nancy.taylor@jud.ca.gov.

Juvenile Delinquency Conference Beneficial to Justice System, Study Finds

California courts are reaping the benefits of an innovative multidisciplinary approach for handling juvenile justice cases, according to a recent independent study. Select counties that have coordinated the efforts of juvenile bench officers, public defenders, district attorneys, probation officers, service providers, educators, and mental health professionals have reported to researchers that they are already showing decreases in truancy, reductions in out-of-home placements, and better coordination of services.

Less than a year old, the coordinated programs were one result of a January 2001 conference funded by the State Justice Institute (SJI), "Juvenile Delinquency and the Courts," attended by 550 juvenile justice professionals representing 54 of California's 58 counties.



Ten months after the conference, an independent study conducted by Coyote Moon Consulting, of Alameda, California, found that the conference was successful in meeting the goal of creating county juvenile justice teams that develop and implement "action plans" to improve their local systems for handling juvenile cases.

The conference focused on youth problems and incarceration patterns in California with the goal of creating a local comprehensive intervention plan to fulfill the special needs of each county's juvenile justice system. To achieve this goal, each participating county sent a team of representatives who held various key positions in their juvenile justice system to the conference. This team approach, using a multidisciplinary collaboration, is based on a model adopted by the Judicial Council of California for local action and statewide coordination to address domestic violence issues. Conference organizers successfully adapted this model to juvenile delinquency.

Teams varied in composition from county to county but included a variety of juvenile justice system professionals, so perspectives from all parts of the juvenile justice system contributed to the development of the action plans. This collaboration also brought about an unexpected side benefit: by bringing all of the key players to the table, service gaps were exposed, which allowed the teams to direct their efforts and financial resources to those areas and also to remove any duplication of effort that may have occurred before implementation of the coordinated system.

The evaluation revealed a broad spectrum of initial successes as a result of the ongoing implementation of the plans developed by the county teams at the conference: new drug and mental health courts, new mentoring programs, increases in group-home graduates, and historically large increases in drug treatment programs. In addition, it identified the need for a more acute assessment of and sensitivity to the problems of female juveniles, which are being addressed through increased staff hiring and training.

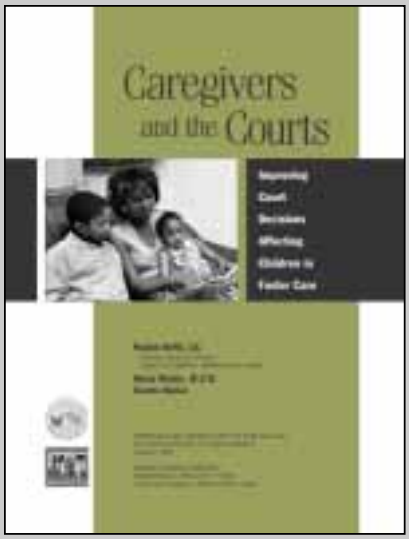
The results also showed that the new collaboration has been effective. Many of the teams continue to meet and work together to improve the services their counties provide in juvenile justice cases. Furthermore, the team approach has worked to smooth over conflicts between players within a jurisdiction, greatly improving communication and opening the doors to better service to juveniles. According to some respondents, the benefits of this effort are already showing in their counties with decreases in truancy and a reduction in out-of-home placements, attributed to earlier and timelier interventions and the introduction of adult parenting classes.

The conference was made possible through funding from the State Justice Institute, established by federal law in 1984 to award grants to improve the quality of justice in state courts, facilitate better coordination between state and federal courts, and foster innovative, efficient solutions to common problems faced by all courts. Since becoming operational in 1987, SJI has awarded over $125 million to support more than 1,000 projects benefiting the nation's judicial system and the public it serves, including the AOC's initial Family Violence and the Courts conference.

The teams will meet again on August 15–16, 2002, at the Radisson Hotel Berkeley Marina in Berkeley, California, for a reunion conference to refine their plans and continue to find ways to make a positive difference in the juvenile justice system. Information on this conference will be available in early spring.

For more information on the Juvenile Delinquency and the Courts conference or the findings of the independent evaluator, contact Allison Schurman, AOC Center for Families, Children & the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102; phone: 415-865-7701; fax: 415-865-7217; e-mail: allison.schurman@jud.ca.gov. More information on SJI is available at *www.statejustice.org*.

CAREGIVER RESEARCH STUDY PUBLISHED



CFCC's Caregiver Project conducted the first major research study in the United States regarding participation by foster parents and relative caregivers in the dependency court process under the federal Adoption and Safe Families Act (ASFA). The project utilized both quantitative and qualitative methods and addressed three research questions:

1. How does training in dependency court process affect caregivers' knowledge and attitudes about participating in court hearings and the likelihood that they will participate?

2. What factors determine how caregiver information is used in judicial decision-making?

3. What are the possible effects of caregiver participation in court on child well-being?

The report, *Caregivers and the Courts: Improving Court Decisions Affecting Children in Foster Care*, was published in January 2002. The final report was submitted to the National Center for Youth Law and the David and Lucile Packard Foundation. If you would like to request a copy, please call 415-865-7739 or e-mail your request to cfcc@jud.ca.gov. The report may also be viewed and downloaded at www.courtinfo.ca.gov/programs/cfcc/pdffiles/caregive.pdf.

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SIXTH ANNUAL AB 1058 CHILD SUPPORT TRAINING CONFERENCE
September 19–21, 2002
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BEYOND THE BENCH XIV
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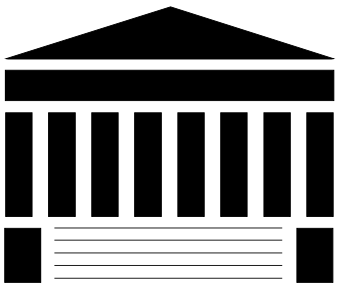

FOR ADDITIONAL INFORMATION ON DATES AND LOCATIONS, PLEASE CALL 415-865-7739

Please note: The date indicated after the case title is the publication date.

Delinquency Case Summaries

CASES PUBLISHED FROM NOVEMBER 6, 2001, TO FEBRUARY 10, 2002

In re Muhammed C. **(Feb. 6, 2002) 95 Cal.App.4th 1325 [116 Cal.Rptr.2d 21]. Court of Appeal, Sixth District.**

The juvenile court found the child to be a person described under Welfare and Institutions Code section 602 for violating Penal Code section 148(a) (resisting, delaying, or obstructing an officer). The police had arrested a person on drug charges and had placed him in the back of a patrol car. While the officers were processing the person's car, the child approached the patrol car to speak with the person. Three officers told the child to step away from the patrol car, and he raised his palm in defiance of the officers. Soon after, an officer placed the child under arrest. The child appealed the juvenile court's judgment.

The Court of Appeal affirmed the judgment. Penal Code section 148(a) provides that every person who willfully resists, delays, or obstructs a peace officer in the discharge or the attempted discharge of any duty of the peace officer's employment is guilty of a misdemeanor. The child contended that he did not obstruct or delay the officers because he did nothing to prevent the arrest of the other person. He claimed that he merely attempted to speak with the person in the back of the patrol car and did not pose any safety threat to the person or the officers. The child also argued that he had a constitutional right of free speech to speak with the person. The appellate court held that a reasonable inference could be drawn that the child willfully delayed the performance of the officers' duties because they had ordered him five times to step away from the car and they were interrupted in the processing of the person's car to attend to the child. The child had defied the police officers' instructions. The appellate court also rejected the child's argument that the First Amendment protected his speech. The appellate court noted that the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers; however, in this case, the child failed to argue that the verbal conduct of trying to talk with the detained person was akin to a verbal challenge to police officers. The appellate court held that there was substantial evidence supporting the juvenile court's determination that the child had violated section 148(a) and that the child was lawfully arrested.

In re Arturo D. **(Jan. 24, 2002) 27 Cal.4th 60 [115 Cal.Rptr.2d 581]. Supreme Court of California. (This case was consolidated with *People v. Hinger.*)**

The juvenile court adjudged a youth a ward of the court under Welfare and Institutions Code section for violating Health and Safety Code section 11364 (possession of an opium pipe) and Vehicle Code section 12500(a) (driving without a license). The youth was pulled over by a police officer for traveling 70 miles per hour in a 50-mile-per-hour speed zone. The youth admitted that he lacked a valid driver's license and provided no identification, proof of insurance, or vehicle registration. The officer asked the youth and the two passengers to exit the truck and then proceeded from the front of the truck to feel under the driver's seat for documentation relating to the driver and the truck. The officer then went behind the driver's seat and bent down to look under it. He found a smoking pipe and blue box that held a white vial containing white powder. The youth admitted to the officer that the items were his and provided the officer with his name, address, and birthdate. The officer issued a citation for speeding and driving without a license and arranged to have the vehicle towed because there was no licensed driver. The youth accompanied the officer to the police station to call for a ride home. At the station the officer learned that the substance in the vial was methamphetamine, and the child was arrested.

The District Attorney later filed a petition alleging violations of Health and Safety Code section 11377(a) (possession of methamphetamine), Health and Safety Code section 11364 (possession of an opium pipe), and Vehicle Code section 12500(a) (driving without a license). At the jurisdictional hearing, the juvenile court denied the youth's suppression motion and sustained the petition except for the possession of methamphetamine charge because there was insufficient evidence that the vial belonged to the child. The youth appealed, and the Court of Appeal reversed the order denying the youth's suppression motion as to the pipe, reasoning that the search, for registration and other identifying documentation, was unreasonable.

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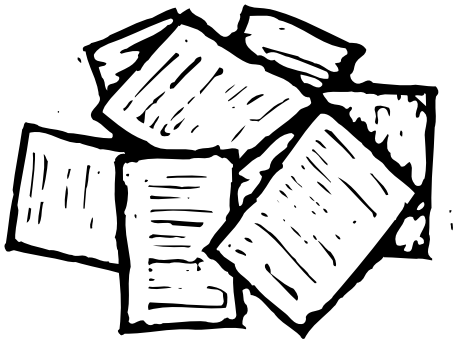
Delinquency Case Summaries

Continued from page 16

The Supreme Court reversed the decision of the Court of Appeal. Under Vehicle Code sections 4462 and 12951, the person in immediate control of the vehicle is required to present evidence of registration and a driver's license when a police officer requests them. In this case, the youth failed to provide the information after being stopped for a traffic violation, and the police officer proceeded to search the vehicle. The Fourth Amendment prohibits unreasonable searches and seizures, but it is established that individuals have a reduced expectation of privacy when driving on public thoroughfares. The Supreme Court addressed the question whether, in the context of a valid traffic stop in which a driver fails to produce a driver's license, registration, and other identification, the reduced expectation of privacy consistent with the Fourth Amendment permits a police officer to conduct a limited warrantless search for the necessary documents. The Supreme Court honored the juvenile court's finding that the officer was searching for both the youth's registration and license. Although the youth had explained to the officer that he did not have a license, the officer was entitled to enter the vehicle to conduct a limited search.

The youth also argued that the officer had to conduct a limited warrantless search in a traditional repository such as the glove compartment or sun visor. The Supreme Court agreed with the Attorney General and found that searches for regulatory documentation are permissible in those locations where such documentation reasonably may be expected to be found, including under the driver's seat. There are many decisions that report instances of driver's wallets or identification found under the seat, sometimes placed there in an effort to hide the driver's identity. The Supreme Court determined that it was reasonable for the officer to view the



area underneath the seat. It agreed with the Attorney General that the police officer may reasonably search and more easily view underneath the seat by looking behind it.

The Supreme Court reversed the decision of the Court of Appeal. The Supreme Court rejected the youth's argument that the search was unreasonable because the nature and quality of the intrusion on his Fourth Amendment interests outweighed the importance of the government's interest alleged to justify the intrusion. The officer's decision to conduct the limited search was reasonable, and the contraband discovered in plain view was properly obtained. The juvenile court properly denied the suppression motion, and the Court of Appeal erred in reversing the judgment.

Justice Werdegar concurred with the majority in that warrantless searches of traditional repositories for proof of registration is authorized, but dissented from the holding that the space underneath the driver's seat is a traditional repository for a registration document. She also dissented from the majority's holding that an officer can constitutionally search a vehicle for a driver's license because the officer has other options for obtaining the driver's identity, such as running a computer search, having the driver submit a thumbprint, accepting another type of identification, or arresting the driver. Justices Kennard and Brown dissented, stating that the majority's decision runs counter to the high court's decision in *Knowles v. Iowa* (1998) 525 U.S. 113, and that there is "no justification for the warrantless, nonconsensual search of a car's interior when the officer has made no arrest and the officer lacks probable cause to believe that the car contains contraband."

In re Kelly W. **(Jan. 22, 2002) 95 Cal.App.4th 468 [115 Cal.Rptr.2d 536]. Court of Appeal, Second District, Division 6.**

The juvenile court adjudicated a child a ward of the court for violating Penal Code sections 647(f) (public intoxication) and 148.9 (giving false information to a police officer) and Welfare and Institutions Code section 871(c) (willful failure to return to custody). The child was in the custody of a youth center and obtained a day pass to leave the facility and go to his mother's home. He never returned to the center, a warrant was issued, and a police officer found the child passed out on the street intoxicated. The child told the officer that his last name was "K" and his correct birthdate. The child was cooperative, and the officer took him to the hospital before taking him to juvenile hall. The juvenile court found that the child gave the officer the wrong name. On the child's birth certificate the child's last name appears as "W-K." In the courtroom the child was referred to as "W," his mother's surname. The child contended that there was insufficient evidence to prove that he falsely identified himself to the police officer.

The Court of Appeal reversed the decision of the juvenile court only with respect to the charge of false identification. The appellate court's task is to review the record in the light most favorable to the judgment to determine whether it discloses substantial evidence so that a reasonable trier of fact would find the defendant guilty beyond a reasonable doubt. The child argued that he gave the last name "K" because that is the last name on the certificate. The juvenile court found that the child gave a false name because he did not

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say his last name was "W-K." However, the prosecution failed to show that "K" was a false name or that of another person. Also, the prosecution failed to prove that the child intended to evade the process of the court or to evade proper identification. The child was cooperative and gave his correct birthdate, and there was no evidence that the police were unable to trace his warrant. The child gave the officer information that allowed the officer to identify him.

Justice Yegan dissented, noting that the child had been arrested, adjudicated a delinquent, placed on probation, remanded to custody, and given a day pass all under the name "W": "Now what could have motivated him to suddenly use only his father's last name?" The child had failed to state the hyphenated name that appeared on his birth certificate and also failed to give the name used in prior contacts with law enforcement. The juvenile court therefore could have found beyond a reasonable doubt that the child gave the police officer a false name with the requisite intent in violation of Penal Code section 148.9.

In re Justin S. **(Nov. 6, 2001) 93 Cal.App.4th 811 [113 Cal.Rptr.2d 466]. Court of Appeal, Second District, Division 4.**

The juvenile court adjudged a child a ward of the court, alleging a violation of Penal Code section 211 (second-degree robbery). The child had kicked and beaten another child with the help of his friend, who also took money from the victim. The child was placed on probation, which included the condition of house arrest. The child's attorney objected. On appeal, the child challenged two additional conditions of probation: an order "not to engage in delinquent behavior" and an order not to associate with any gang members or anyone his parents or probation officer disapproved of. The child relied on the holding of *In re Tanya B.* (1996) 43 Cal.App.4th 1, in which the appellate court held that a child may challenge probation conditions for the first time on appeal.

The Court of Appeal overruled its prior opinion in *Tanya B.* The appellate court determined that the Supreme Court's holding in *People v. Welch* (1993) 5 Cal.4th 228, that a defendant may not complain of the unreasonableness of probation conditions for the first time on appeal, was extended to juvenile proceedings. The child in this case argued that the probation conditions were unconstitutionally vague and overbroad. Because these claims were "pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court" (*id.* at p. 235), the child was not foreclosed from raising those issues on appeal without objecting to them at the trial court level. The appellate court rejected the child's contention that the condition prohibiting delinquent behavior was vague. The term "delinquent behavior" is defined in Welfare and Institutions Code sections 601 and 602. The appellate court did agree with the child's contention that the condition prohibiting association with gang members was unconstitutionally overbroad. The appellate court modified the condition to state: "Do not associate with any person known to you to be a gang member . . . ." The juvenile court's decision was affirmed.

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In re Jerry P. **(Jan. 28, 2002) 95 Cal.App.4th 793 [116 Cal.Rptr.2d 123]. Court of Appeal, Second District, Division 7.**

The juvenile court denied a man reunification services, determining that he was not the child's statutorily presumed father. The child was declared a dependent when both the child and mother tested positive for cocaine. At the Welfare and Institutions Code section 366.26 hearing, the man (J.R.) appeared and was appointed counsel. J.R. was in a one-year relationship with the child's mother when the child was conceived. The court continued the hearing to assess J.R.'s presumed-father status and later ordered a paternity test to determine whether J.R. was the biological father. In the interim, J.R. filed a petition requesting presumed-father status and reunification services. J.R. visited his son once a week at the foster home, he would go on outings with the foster mother and child, and the child called J.R. "Daddy." DNA testing established that J.R. was not the biological father of the child. J.R., the child, and the foster parents supported the granting of presumed-father status, but the Department of Children and Family Services (DCFS) opposed it, arguing that he had not taken the child into his home and that he was not the biological father. The court rejected DCFS's arguments, found J.R. to be the child's presumed father, and ordered reunification services.

DCFS petitioned for rehearing under Welfare and Institutions Code section 252, and the matter was heard de novo before a juvenile court judge. The juvenile court judge took notice of the file's contents and, after the rehearing, determined that J.R. had not taken the child into his home and denied him presumed-father status for that reason only. The juvenile court then denied the father reunification services. J.R. appealed, contending that the method of determining presumed-father status in dependency proceedings is unconstitutional because it permits the mother or a third party to preclude a man from becoming a presumed father by preventing him from taking a child into his home despite his commitment to the child.

The Court of Appeal reversed the decision of the juvenile court. Under Welfare and Institutions Code section 361.5(a), only a statutorily presumed father is entitled to reunification services. The appellate court rejected DCFS's argument that J.R. could not be granted presumed-father status because he was not the natural father of the child. Also, presumed-father status in the dependency context is not a presumption of fatherhood in the evidentiary sense; the purpose in dependency proceedings is to determine whether the alleged father has demonstrated a sufficient commitment to his parental responsibilities to be afforded rights not afforded to natural fathers such as reunification services and custody. (See *Adoption of Kelsey S*. (1992) 1 Cal.4th 816 and *In re Zacharia D*. (1993) 6 Cal.4th 435.)

To qualify as a presumed father under Family Code section 7611(d), a man must hold the child as his own and receive the child into his home; he does not have to be the biological father. In this case, J.R. established a father-son relationship and from the beginning held himself out as the child's father. J.R. demonstrated a full commitment to the child's welfare. In this case, although the father had a loving, nurturing relationship with the child, he was unable to physically take the child into his home because the mother, the hospital, and DCFS made it impossible for him to do so.

The appellate court found that at least with respect to biological fathers, section 7611 and the related dependency scheme violate the federal constitutional guarantees of equal protection and due process to the extent that they allow a mother or third party to preclude a father from becoming a presumed father where he has demonstrated a commitment to the child. In this case, although J.R. was not the biological father, the appellate court found that the *Kelsey S.* protection (a man is protected from discrimination in attempting to obtain presumed-father status if (1) he is attempting to exercise parental responsibility as the mother will allow and circumstances permit, and (2) he is ready and willing to exercise the full measure of his responsibilities, emotional, financial, and otherwise) should be extended to men who have demonstrated a commitment to parental responsibility.

The appellate court found that J.R. met the *Kelsey S.* requirements and that affording him reunification services was in the child's best interest. The appellate court reversed the decision of the juvenile court denying J.R. reunification services.

Justice Perluss concurred with the majority that nongenetic paternity does not necessarily defeat presumed-father status under section 7611(d) and that in general the rights of unwed biological fathers extend to dependency proceedings. However, Justice Perluss dissented from the judgment reversing the juvenile court's order because there existed substantial evidence that J.R. failed to meet the *Kelsey S.* standard. For example, J.R. did not initially appear at the dependency proceedings, he refused to provide his residence

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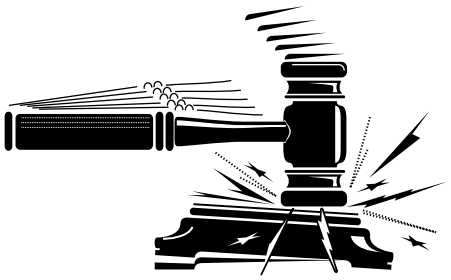
address to DCFS, he failed to attend at least two visits with the child, and he failed to keep an appointment with DCFS. Justice Perluss also addressed some issues relating to the question whether an individual who is neither the child's father nor a presumed father, but has demonstrated a strong commitment to the child, has a constitutional right to reunification services.

In re Karen R. **(Jan. 9, 2001) 95 Cal.App.4th 84 [115 Cal.Rptr.2d 18]. Court of Appeal, Second District, Division 3.**

The juvenile court declared three siblings dependents under Welfare and Institutions Code section 300(a)–(d), (i), and (j). The mother and father had beaten their oldest daughter and forcibly shaved her head in the presence of the other two children. The father told the mother to return to work, then raped the oldest daughter. The oldest child went to her siblings' room and said that she had been raped. When the mother returned, the father was forcing the oldest child to do exercises and calling her demeaning names. The two other children were crying, and the mother did nothing. The mother also did not believe the oldest child when she reported that her father had raped her. The juvenile court determined that the oldest child had been sexually abused, that the mother had failed to protect her child from the abuse, and that this conduct placed the other children at risk of suffering similar abuse. The juvenile court denied reunification services to the father and ordered the mother reunification services such as anger management counseling and parenting classes. The mother appealed, claiming there was insufficient evidence to support a finding that her son was a dependent child under section 300(d).



The Court of Appeal, in this partially published opinion, affirmed the decision of the juvenile court. The appellate court determined that there was sufficient evidence that the son was at substantial risk of sexual abuse. Section 300(d) provides that a child comes within the jurisdiction of the juvenile court if the child has been sexually abused or if there is substantial risk that the child will be sexually abused by his or her parent or guardian or a member of the household. Penal Code section 11165.1 defines "sexual abuse" to include "sexual assault"; section 11165.1 defines "sexual assault" to include violations of Penal Code section 647.6. Penal Code section 647.6 states the penalties for "annoying or molesting a child under the age of 18." Although no sexual abuse occurred in the son's presence, the abuse that did occur in his presence was sufficient to warrant the finding that a child would have been greatly annoyed by witnessing the events. The appellate court found that the juvenile court could properly conclude that he had been sexually abused within the meaning of section 300(d).

The appellate court also reasoned that although the danger of sexual abuse may be greater for a female sibling than for a male, it does not follow that the danger of sexual abuse to the male is not substantial. The juvenile court, in this case, could have reasonably concluded that any child, regardless of gender, was in danger of sexual abuse by the father.

In re Kristine W. **(Dec. 12, 2001) 94 Cal.App.4th 521 [114 Cal.Rptr.2d 369]. Court of Appeal, Fourth District, Division 1.**

The juvenile ordered that the San Diego County Health and Human Services Agency (HHSA) receive certain information from a dependent child's therapist regarding her therapy. The 16-year-old child was declared a dependent because her father physically and sexually abused her and physically abused her brother. The child was placed unsuccessfully with her paternal grandparents, a paternal uncle, and the Polinsky's Children's Center as well as in foster care. She consistently ran away from placements, skipped school, had angry outbursts, and engaged in self-mutilation. At the jurisdictional hearing the court ordered that the child attend therapy while under the care of her grandparents. There was a change of therapists when the juvenile was later placed with her paternal uncle. She was discouraged and refused to continue. The child conveyed to the court that she needed to talk to someone confidentially but did not trust the therapist. Months later she resumed therapy. Eight months later, HHSA requested a psychological evaluation of the child. The child's counsel objected, invoking the psychotherapist-patient privilege. The court ruled that the privilege applied and ordered that the report go to the child's attorney and a sealed copy to the court.

The child refused to participate in another evaluation, and the court stated it would not force her to undergo it unless a higher level of placement were warranted. At a special hearing the child's attorney invoked the psychotherapist-patient privilege, asking that the therapist not speak to the social worker about the child's therapy. The court denied this request, stating: "[T]he need for therapy to be privileged and confidential would be balanced on a case-by-case basis with the Agency's [HHSA's] need for information to perform its service providing function." The juvenile court found that HHSA's need for information took precedence over the child's need for privileged and confidential therapy, and that under Evidence Code section 1012, HHSA was entitled to receive information from the

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therapist related to therapy. The child appealed the order requiring disclosure of therapy information.

The Court of Appeal affirmed the decision of the juvenile court to the extent that it permitted the therapist's disclosure of matters that would reasonably assist the juvenile court in evaluating whether further orders were necessary for the child's benefit but also kept the details of her therapy confidential. The psychotherapist-patient privilege exists between a dependent child and his or her therapist. Under Evidence Code section 1013, the holder of the privilege is the patient when he or she has no guardian or conservator. Welfare and Institutions Code section 317(f) provides that a dependent child who is of sufficient age and maturity to consent may invoke the psychotherapist-client privilege. Under Evidence Code section 1013, confidential communication between a patient and a psychotherapist is not disclosed to third persons other than those who are present for the consultation and "those to whom disclosure is reasonably necessary for the transmission of information or the accomplishment of the purpose for which the psychotherapist is consulted . . . ." The appellate court noted that without the testimony of psychologists in many juvenile and child custody cases, the courts would have little or no evidence and decisions would be made on the emotional response of the court. (See *In re Jasmon O.* (1994) 8 Cal.4th 398.) The child suggested that the court rely on her counsel to ascertain and divulge information from the therapist, and the appellate court determined that that was impracticable. The appellate court stated that the therapist's input is invaluable although there are other means of assessing the child's success. The appellate court also recognized that the child would not be reunified with her father and that she had a substantial privacy interest in the therapy that she was deemed to need. The appellate court therefore limited its affirmation of the juvenile court's decision as stated above.

***In re Emmanuel R.* (Dec. 11, 2001) 94 Cal.App.4th 452 [114 Cal.Rptr.2d 320]. Court of Appeal, First District, Division 3.**

The juvenile court determined that the Interstate Compact on Placement of Children (ICPC) did not apply to a child's visit with a parent. The 12-year-old child and his brother were living in California with their mother when the Alameda Social Services Agency (SSA) filed a dependency petition based on the mother's alcohol abuse. The children's father lived in Florida with his girlfriend and their infant child. The juvenile court granted the child's request to visit his father in Florida, but days before he was to go, an SSA caseworker received a negative oral report about the child's father from the Florida authorities. The SSA worker was intending to request that the court reconsider the visitation order, but the mother had already permitted her sons to fly to Florida with their father, believing it was in their best interest. The SSA worker obtained an ex parte arrest warrant for the children and, with the help of Florida authorities, brought the boys into protective custody. A month later, the boys were removed from their father's home and returned to California.

SSA had requested that criminal charges be pressed against both parents, but the juvenile court ordered the children returned to their mother. At a review hearing the juvenile court ordered an ICPC study of the father's home for placement. Florida denied the ICPC placement request based on the father's criminal record and past history with Florida authorities. The child later requested that he visit his father, but SSA opposed the request because of the ICPC denial. The juvenile court determined that it had the authority to order visitation despite the ICPC study finding that the visit was in the child's best

interest. The juvenile court ruled that (1) ICPC does not apply to a child's visit with a parent in another state, (2) the study assessing the suitability for placement does not preclude a short-term visit, and (3) the visit was in the child's best interest. The court approved an immediate visit for the end of the summer, "holiday visits," and a four-week visit in the upcoming summer. The juvenile court denied SSA's motion for stay, and it immediately sought a stay from the Court of Appeal and a writ of supersedeas.

The Court of Appeal affirmed the decision of the juvenile court. The appellate court found that the ICPC does not apply to court-approved visitation with a parent. Because under California case law ICPC procedures do not apply to a dependent child's placement with a natural parent, it therefore does not apply to short-term visits. The juvenile court did not order a placement; rather, it approved a series of short-term visits. The appellate court also determined that the prior ICPC evaluation did not convert the visits into a placement. SSA contended that the juvenile court exceeded its jurisdiction in finding the visits to be in the child's best interest, contrary to the recommendation of Florida authorities. The appellate court found that the juvenile court did not abuse its discretion in approving visitation.

The father requested sanctions against SSA for abusing the legal process in trying to prevent visitation. The appellate court noted that SSA litigated the case in an aggressive manner

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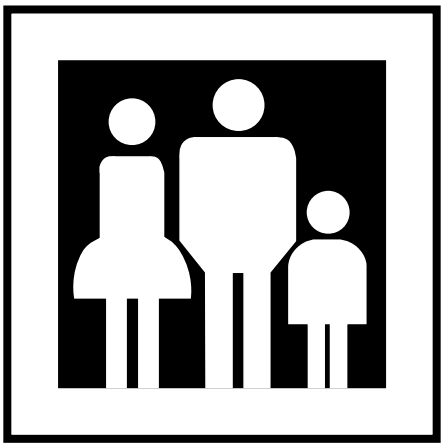
with questionable regard for the child's best interest and had "overreacted." The appellate court declined to impose sanctions on SSA because the appeal was not frivolous given the important legal determinations raised under ICPC, and it had not acted in bad faith or for an improper purpose.

In re Harry N. **(Nov. 28, 2001) 93 Cal.App.4th 1378 [114 Cal.Rptr.2d 46]. Court of Appeal, Second District, Division 2.**

The juvenile court terminated a mother's and father's parental rights under Welfare and Institutions Code section 366.26. The child had been placed in a foster home soon after his birth. The foster home was a safe and stable placement, and the parents eventually stopped visiting their child. The paternal grandmother, who was living in Puerto Rico, had attended a hearing and indicated her interest in caring for the child. The court ordered the Department of Children and Family Services (DCFS) to evaluate the grandmother. The court continued to find the foster placement appropriate and eventually terminated the parents' reunification services. The court set a Welfare and Institutions Code section 366.26 hearing. DCFS determined that adoption by the paternal grandmother or paternal aunt and uncle would be excellent; however, the foster parents were also interested in adopting the child and the child was thriving in that placement. The juvenile court terminated parental rights and found that the child was likely to be adopted. The child's relatives filed a Welfare and Institutions Code section 388 petition, which was denied by the juvenile court. The juvenile court granted the foster parents de facto parent status. DCFS recommended that the child be placed with the paternal aunt and uncle in Puerto Rico. The paternal aunt and uncle contended that they had been involved in the proceedings for over a year and had complied fully with DCFS. The child's attorney, arguing in favor of placement with the foster parents, noted that DCFS could have placed the child with the aunt and uncle when reunification services were terminated but it had chosen not to do so. DCFS refuted that argument.

The juvenile court, relying on Welfare and Institutions Code section 366.26(k), determined that there is preference to place children with caretakers and ordered that the child not be moved from the foster home. Adoption was to remain the plan, and relative visits, with the foster parents present, were allowed. DCFS appealed the order terminating parental rights, contending that the juvenile court should have reviewed its placement determination only for an abuse of discretion and allowed the child to be placed with relatives. The child's aunt and uncle contended that they had standing to appeal the order denying their section 388 motion and that the court erred in denying the child's placement with them.

The Court of Appeal reversed the decision of the juvenile court, determining that the aunt and uncle did have standing to appeal the section 388 order. The appellate court needed to consider whether DCFS or the court had the right to determine where a child would be placed for adoption once parental rights were terminated and whether there was statutory preference in this case in favor of the caretakers. DCFS and the child's aunt and uncle relied on Welfare and Institutions Code section 366.26(j), stating that the state department of social services must be responsible for the custody of the child and must be entitled to exclusive care and control of the child until a petition for adoption is granted. They also relied on section 361.3, indicating a preference of relative placement. The foster parents argued that section 366.26(j) provides that placement with caretakers is preferred over all others who attempt to disturb the relationship. The appellate court found that the department of social services, and not the court, is given the power to decide where a child should be placed after the termination of parental rights and adoption is pending. DCFS argued that it did not abuse its discretion in determining that the paternal aunt and uncle were the more appropriate placement for the child. The appellate court reversed the decision of the juvenile court because it failed to give appropriate weight to DCFS's recommendation. The matter was remanded for the juvenile court to determine if DCFS had abused its discretion in making the recommendation in favor of the aunt and uncle. The juvenile court was directed to consider circumstances that might have changed following the filing of the appeal.



In re Clifton V. **(Nov. 27, 2001) 93 Cal.App.4th 1400 [114 Cal.Rptr.2d 1]. Court of Appeal, Second District, Division 7.**

The juvenile court denied a mother's Welfare and Institutions Code section 388 petition. The Department of Children and Family Services (DCFS) filed a petition on the basis that the father's whereabouts were unknown and that the mother had a substance abuse problem and failed to meet her child's basic needs, including treatment for a medical condition. The child was placed with his paternal grandmother.

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Although the mother's reunification services were extended, she visited her child infrequently.

Approximately two years after the child was detained, the grandmother was prepared to become the child's legal guardian. The juvenile court set a Welfare and Institutions Code section 366.26 hearing and a contested guardianship hearing. Prior to the guardianship hearing, the mother filed a section 388 petition alleging that she had completed all court-ordered programs, had been in frequent contact with her child over the phone and in person, had a strong bond with her child, and had a residence and the ability to care for her child. DCFS filed an opposition to the petition with the grandmother's conflicting declaration. In denying the mother's section 388 petition, the juvenile court relied solely on the filed documentation and refused the mother's request to permit live testimony and to cross-examine witnesses. The juvenile court then held the section 366.36 hearing, granted legal guardianship to the grandmother, and terminated its jurisdiction. The mother appealed.

The Court of Appeal reversed the juvenile court's decision denying the mother's section 388 petition. It remanded the case to the juvenile court with the direction to hold a new hearing that would include live testimony and an opportunity for the mother to cross-examine witnesses. The appellate court also vacated the juvenile court's orders establishing the grandmother's legal guardianship and terminating its jurisdiction. Relying on *In re Matthew P.* (1999) 71 Cal.App.4th 841, the appellate court determined that the mother's due process rights were denied when the juvenile court failed to permit live testimony and an opportunity for the mother to cross-examine witnesses at a contested hearing considering an issue of credibility. The juvenile court abused its discretion when it made a credibility determination based solely on written submissions and counsels' arguments. The appellate court rejected DCFS's argument that the juvenile court's error was harmless.

***In re Jessica G.* (Nov. 20, 2001) 93 Cal.App.4th 1180 [113 Cal.Rptr.2d 714]. Court of Appeal, Second District, Division 4.**

The juvenile court terminated a mother's parental rights under Welfare and Institutions Code section 366.26. The juvenile court asserted its jurisdiction over the mother's two children based on a petition alleging that they had been exposed to violent confrontations and domestic disturbances involving the mother and the father of the younger child. The mother had assistance of counsel and a Spanish interpreter at the initial dependency hearing, where the Department of Children and Family Services (DCFS) was given temporary custody of the children until the mother obtained a new residence confidential to the father of the younger child. A second dependency petition was filed when the mother gave birth to a child with a positive toxicology screen. The mother's compliance with court-ordered programs was not satisfactory, although she did keep her visitation appointments with her children. Eventually the juvenile court terminated reunification services, and it scheduled a permanency planning hearing. The hearing was continued because of lack of notice to the fathers. The mother had appeared at the hearing and a guardian ad litem (GAL) was appointed for her. The hearing was again continued and the mother appeared with her GAL and attorney. The juvenile court ordered the termination of the mother's parental rights under Welfare and Institutions Code section 366.26. The mother appealed, arguing that the GAL appointment violated her constitutional due process rights because it was not supported by substantial evidence and that the juvenile court erred in failing to find a benefit exception under section 366.26(c)(1)(A).

The Court of Appeal reversed the order appointing a GAL for the mother and the order terminating her parental rights. The general statutory authority for the appointment of a GAL is under Code of Civil Procedure section 372, and the bases for appointment are under Probate Code section 1801 and Penal Code section 1367. The appellate court relied on the holding in *In re Sara D.* (2001) 87 Cal.App.4th 661, that parental rights are protected by due process and that a parent cannot be deprived of the right to exercise the powers of client and to assist counsel. The appointment of a GAL vitally affects the parent's interest in the companionship, care, custody, and management of his or her children. The attorney for a parent who may need the appointment of a GAL may ask the parent to consent to the appointment or directly approach the court to request notice and a hearing. In this case, at the section 366.26 hearing when the GAL was appointed, no one explained what the appointment was or how it would affect the mother's rights. Also, no one made an inquiry as to whether the mother was competent enough to understand the proceeding or to assist her attorney. The appellate court rejected DCFS's argument that the mother had waived her right to appeal the appointment of the GAL from the final order terminating her parental rights because she did not previously file a writ.

***In re Kiana A.* (Nov. 19, 2001) 93 Cal.App.4th 1109 [113 Cal.Rptr.2d 669]. Court of Appeal, Second District, Division 3.**

The juvenile court found in favor of one presumptive father over another. At the time of the child's mother's arrest,

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one presumptive father (K.W.) removed the child and her half-sibling from their mother's home. The court had sustained the Welfare and Institutions Code section 300 petition alleging that the mother had inappropriately disciplined the children, that she had a history of drug abuse, and that the father of the child's half-sibling had inappropriately touched the child. The child and her half-sibling were removed from K.W.'s home and placed in foster care. The mother had made conflicting statements about the paternity of the child, but K.W. indicated that he had been living with the mother when she was pregnant and that he had been treating the child as his own for many years. At the conclusion of the detention hearing, the juvenile court returned the child to K.W.'s custody. The matter was recalled when K.W.'s criminal history proved to be more recent and extensive than he had testified. The juvenile court rescinded its prior placement order and ordered the child to be placed in foster care.

Prior to disposition, the second presumptive father (M.A.) sought to be named the presumptive father of the child and declared that he was living with the mother at the time of the child's conception, that his name appeared on the child's birth certificate, and that he married the mother two years after the child's birth. M.A. had been arrested at the time of the child's birth and remained incarcerated for 12 years. The juvenile court denied K.W.'s request for genetic testing and found that both K.W. and M.A. qualified as the child's presumed father. Because the child acknowledged K.W. as her father and he had received her into his home, the juvenile court decided that K.W. prevailed over M.A. M.A. appealed, arguing that he was the presumptive father, that K.W. did not qualify as a presumptive father, and that the juvenile court should have ordered genetic testing before weighing the presumptions of paternity.

The Court of Appeal affirmed the decision of the juvenile court. The appellate court agreed with the juvenile court and M.A., that M.A. qualified as a presumptive father under Family Code section 7611(c)(1) because his name appeared on the birth certificate and had married the mother after the child's birth. The appellate court rejected M.A.'s argument that K.W. did not qualify as the child's presumptive father. K.W. did qualify as the child presumptive father under section 7611(d) because he took the child into his home, held her out as his natural child, and acted toward her as a parent by enrolling her in school and transporting her to and from school. Both M.A. and K.W. were entitled to a rebuttable presumption of paternity.

The juvenile court weighed the competing presumptions under Family Code section 7612(b) in favor of K.W. M.A. was incarcerated throughout the child's life and throughout his marriage to the mother, and the child did not recall ever having seen M.A. prior to his appearances during the proceedings. On the other hand, K.W. had taken the child into his home, cared for her needs, and signed a declaration of paternity in juvenile court. The appellate court determined that M.A.'s claim for genetic testing for the first time on appeal was untimely. The appellate court noted that even if M.A. could have raised the genetic-testing issue on appeal, a different result would not have been obtained because biological paternity is not necessarily determinative. The juvenile court did not err in failing to order genetic testing. The appellate court also held that M.A. had no overriding due process right to parent the child.

In re Angel W. **(Nov. 16, 2001) 93 Cal.App.4th 1074 [113 Cal.Rptr.2d 659]. Court of Appeal, Third District.**

The juvenile court terminated a mother's parental rights under Welfare and Institutions Code section 366.26. The child was adjudged a dependent of the court based upon allegations of neglect, domestic violence, and substance abuse. The juvenile court ordered reunification services but later terminated them because the mother had relapsed. The juvenile court decreased visitation and set a section 366.26 hearing. The mother requested substitute counsel at the hearing, asserting that her current counsel failed to return her telephone calls, misrepresented facts, and failed to make important arguments. The mother's counsel responded to these allegations, and the juvenile court found that the mother had not demonstrated that new counsel was required or that her current counsel was incompetent. The mother unsuccessfully attempted to represent herself. When the mother asked to represent herself, the court explained that it must find her competent to do so. The mother was emotional and continually interrupted the court. The juvenile court concluded that it could not take a waiver of right to counsel and called a recess. When the proceeding resumed, the court did not attempt to take the mother's waiver and terminated her parental rights. The mother appealed.

The Court of Appeal, in this partially published opinion, affirmed the decision of the juvenile court but determined that it improperly denied the mother her right to self-representation. Both the federal and state constitutions do not confer a right to self-representation. However, the appellate court adhered to its holding in *In re Justin L.* (1987) 188 Cal.App.3d 1068 that there is a statutory right to self-representation in a termination of parental rights proceeding and that an error denying such a right would be analyzed under the principles of harmless error. Section 317(b) of the Welfare and Institutions Code gives the parent the right to waive appointed counsel: "This limitation on the court's duty to appoint counsel is implicit

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Dependency Case Summaries

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recognition that the primary right of the parent is self-representation." In this case, the juvenile court attempted to take a waiver, but the mother was initially too upset. There was no evidence that the mother lacked basic competency to waive counsel or represent herself, so the juvenile court should have attempted the waiver process after the recess. The appellate court found that the juvenile court improperly denied the mother's right to represent herself. Because a more favorable result was not reasonably probable if the mother had been self-represented, the juvenile court's error was harmless.

***In re Jessica C.* (Nov. 15, 2001) 93 Cal.App.4th 1027 [113 Cal.Rptr.2d 597]. Court of Appeal, Fourth District, Division 3.**

The juvenile court adjudged five siblings as dependents of the court. The children were initially detained based on allegations that their father had physically abused them. There were also allegations of sexual abuse (touching) by the father against the oldest child, who was 11 years old. The juvenile court sustained the jurisdictional petition under Welfare and Institutions Code sections 300(a) (serious physical harm inflicted nonaccidentally) and section 300(b) (serious physical harm as a result of inadequate supervision), but not under section 300(d) (sexual abuse). Five months later, the oldest child was interviewed by the county's child abuse service team (CAST) and reported many incidents in which her father had sexually abused her. The social service agency then filed a subsequent petition under Welfare and Institutions Code section 342 alleging numerous sexual acts committed prior to the children's detention. At the hearing the juvenile court treated the section 342 petition as a section 388 modification petition. The oldest child testified to numerous incidents of sexual abuse, including sexual intercourse, but the juvenile court found only that the child's father had requested that she photograph him naked and that he had fondled her breasts via skin-to-skin contact. The children were then adjudged as dependents under section 300(d). The juvenile court found that the oldest child should be removed from the mother's home and that visitation between the child and her father would be only with her consent and with the supervision of a therapist. The father appealed the decision that he had committed sexual abuse against his daughter, and the five children also appealed the juvenile court's denial that their father had had intercourse with the oldest child.

The Court of Appeal affirmed the decision of the juvenile court with the exception of one allegation of sexual abuse that it did not consider because it failed to amend the pleading according to proof. The father appealed the decision based on insufficient evidence and res judicata. The appellate court rejected the father's insufficient-evidence argument on the ground that the juvenile court's order was based on actual sexual abuse, not just the oldest child's belief that she had been abused. The appellate court also rejected the father's res judicata argument because the new disclosures of child abuse in the child's CAST interview were substantially different from previous disclosures and constituted new evidence. Because disclosures of child molestation may not be complete before the initial dependency hearing, preventing disclosure of different or additional evidence at a subsequent hearing would penalize the child. The children argued on appeal that the juvenile court should have allowed the petition to be amended according to proof, specifically the substitution of the word "touching" for the term "penetrating." The appellate court noted that the ability to amend according to proof plays an important role in the overall dependency scheme. The juvenile court's decision not to allow the amendment was an abuse of discretion. The appellate court also held that the juvenile court was not required to rule on the additional allegations of abuse. The appellate court remanded to the juvenile court for a finding on the amended allegation.

Summaries of Other Child-Related Cases

CASES PUBLISHED FROM NOVEMBER 6, 2001, TO FEBRUARY 10, 2002

Alliance for Children's Rights v. Los Angeles County Dept. of Children & Fam. Services **(Feb. 1, 2001) 95 Cal.App.4th 1129 [116 Cal.Rptr.2d 288]. Court of Appeal, Second District, Division 1.**

The juvenile court refused to issue a blanket order prohibiting the Department of Children and Family Services (DCFS) from waiving monthly social worker visits with dependents, but found that each DCFS waiver should be submitted to the dependency judge supervising the particular dependent child for approval at a noticed hearing. Alliance for Children's Rights (Alliance) believed that DCFS routinely approved waivers for budgetary reasons rather than case-appropriate reasons to accommodate high social worker caseloads. DCFS regulations generally require social workers to visit dependents monthly. However, the regulations do permit DCFS to approve less frequent visits under specified circumstances, such as when the child has been in a stable, positive placement for a long period. Alliance petitioned the juvenile court for a special order prohibiting waivers of social worker visitation. DCFS opposed it, and both parties submitted evidentiary support for its position. The parties and the court agreed that the court could consider all of the evidence and exhibits submitted by both parties, and the court held a hearing.

At the hearing, the parties and court discussed, among other issues, the authority of the court with respect to DCFS regulations regarding social worker visitation and the number of waivers issued by DCFS. DCFS admitted that the juvenile court has the authority to order DCFS to visit children monthly or more frequently on a case-by-case basis. The juvenile court tentatively ruled that it would issue an order establishing a process by which DCFS would submit a request to the court when seeking a waiver from the monthly visitation rule. The court noted that it would provide greater detail on what information would be required if DCFS made such a request.

Months later, the juvenile court held a second hearing and found that visitation waivers are common practice in Los Angeles County. The juvenile court ordered DCFS to submit a waiver report to the judicial officer presiding over that particular case and to notice the other parties. The report was to include information regarding whether DCFS had considered the waiver request, written documentation of DCFS's determination, and grounds for the waiver request. The juvenile court also ordered that a judicial officer set a noticed hearing at the earliest possible date to read and consider the report and other evidence to determine the necessity for a specific order regarding frequency of visitation. The juvenile court also ordered DCFS to provide a list of all dependent children not visited monthly pursuant to a visitation waiver to the presiding judge of the juvenile court or to the judicial officers hearing the cases and to all counsel who regularly practice in each department. DCFS appealed this order.

The Court of Appeal affirmed the decision of the juvenile court. The appellate court determined that there was sufficient evidence to support the juvenile court's findings. The juvenile court must take appropriate action necessary to protect the interests of the child (Welf. & Inst. Code, § 317(e)) and make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child (Welf. & Inst. Code, § 362(a)). Dependency courts are afforded the best possible scope of discretion in making decisions promoting the best interest of the child. The juvenile court's order does not prohibit waivers because social workers can request a waiver at any time subject to the supervisor's and court's review. The juvenile dependency court has undisputed power to regulate visitation frequency in each case. The appellate court determined that the juvenile court's limited order did not violate the separation of powers or improperly divest DCFS of its discretionary role in the waiver process.

Adoption of Alexander M. **(Dec. 10, 2001) 94 Cal.App.4th 430 [114 Cal.Rptr.2d 218]. Court of Appeal, Fourth District, Division 3.**

A married woman engaged in a brief sexual relationship with a man and they conceived a child. Although she had filed a petition to dissolve her marriage years before the child's conception, she had not obtained a final dissolution. When the child was born, the mother immediately relinquished the child for adoption. The adoptive parents served the man with notice of alleged paternity and adoption and filed a petition for adoption. Two weeks later, the prospective adoptive parents filed a petition to terminate the man's parental rights and to determine the necessity of his consent to the adoption. The man filed a petition to establish paternity and, if he was the father, then to obtain custody or visitation. Genetic testing established that the man was the biological father of the child.

The prospective adoptive parents' petition and the biological father's

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Other Cases Involving Children
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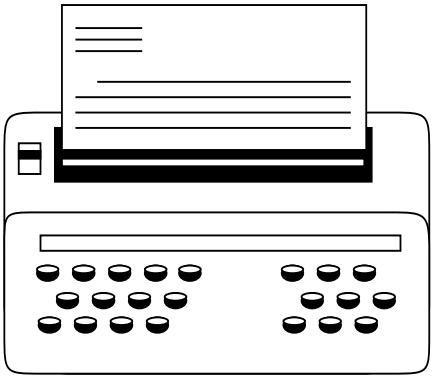
petition were consolidated and heard in probate court. The judicial officer determined that, because the mother was married, her husband was the presumed father of the child, and that the case was governed by Family Code section 7631. The court vacated the consolidation order, suspended the consent petition and adoption proceedings, and transferred the paternity petition to the family court. The family court entered a judgment of paternity and denied the biological father's request for visitation without prejudice to his request in the adoption matter, which was pending but temporarily suspended. The probate court moved to set a trial date for the consent petition, and the biological father argued that Family Code section 7631 prohibited that action until the paternity petition was final and custody and visitation were adjudicated. The probate court judge agreed, denied the prospective adoption parents' motion, and assigned himself the family law issues of custody and visitation. The biological father appealed the family law judge's order that failed to adjudicate custody and visitation, claiming it violated section 7631, which requires the finality of paternity actions prior to initiation of adoptive proceedings. The prospective adoptive parents sought mandamus relief from the probate court's order that custody and visitation be determined before the court would consider their consent petition.

The Court of Appeal dismissed the biological father's appeal from the family law court as moot. The appellate court held that the trial court must hold a hearing on the prospective adoptive parents' petition to terminate the biological father's rights under section 7664(b), first taking evidence on whether the biological father's consent to the adoption is required. A biological father who is not a presumed father can petition the court to establish his legal status as the child's father, but the petition of the mother or prospective adoptive parents to terminate his parental rights will be granted unless he proves that it is in the child's best interest that the adoption not proceed. (See Fam. Code, §§ 7630, 7631, 7662, and 7664 and *Adoption of Kelsey S.* (1992) 1 Cal.4th 816.) The biological father argued that now that he had been determined to be the natural father, he was entitled to have custody and visitation determined under the "detriment-to-the-child" standard under Family Code section 3401 rather than the "best-interest standard" under section 7664(b). The appellate court determined that the biological father must prove that he has demonstrated full commitment to the child in order to be entitled to the benefit of the detriment-to-the-child standard under section 3401; and if he cannot, he must prove that retention of his parental rights, rather than adoption, is in the child's best interest.



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